

## REMARKS

Claims 1-3 and 5-23 are pending in the application. Claims 1, 7, 15, and 20 are independent. No claims have been amended, canceled, or added.

### Rejection of Claim 20 Under 35 U.S.C. § 112, First Paragraph

In paragraph 2 the Examiner rejected claim 20 under USC §112, first paragraph as failing to comply with the written description requirement. In particular, the Examiner states that the “optically circuit switching the router traffic” is not disclosed in the application. An objective standard for determining compliance with the written description requirement is, “does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed, that he or she was in possession of the invention as now claimed.” MPEP §2163.02. Possession may be shown in a variety of ways and the subject matter of the claim need not be described literally in order to satisfy the written description requirement. MPEP §2163.02. Applicant respectfully traverses the rejection.

Applicant respectfully submits that the Applicant’s Specification describes the subject matter of claim 20 in sufficient detail to allow persons of ordinary skill in the art to recognize that Applicant was in possession of the subject matter in claim 20. For example, at page 7, lines 28-29 of Applicant’s Specification describes “[t]he example hybrid network element 200 may be a **router**” (emphasis added). Page 8, lines 9-12 of Applicant’s Specification describes “The hybrid network element 200 **receives switched traffic, routed traffic**, and/or control traffic from upstream network elements on incoming wavelengths 202 and sends traffic to downstream network elements on outgoing wavelengths 204” (emphasis added). Thus, Applicant respectfully submits that the network element 200 (or router 200) traffic includes both switched traffic and routed traffic. Page 7, lines 11-13 of Applicant’s Specification describes “In one embodiment, one set of wavelengths (one or more switching wavelengths) may be used as labels to indicate that the **traffic is to be switched** in the optical domain **using the optical circuit switching**” (emphasis added). Thus, Applicant respectfully submits the Specification adequately describes that the network element 200 (or router 200) traffic includes both switched traffic and routed traffic, at least some of which can be switched using optical circuit switching. Accordingly, Applicant respectfully requests that

the Examiner reconsider and remove the rejection to claim 20.

Rejection of Claims 1-2, 5-15, and 17-23 Under 35 U.S.C. §103(a)

The Examiner rejected claims 1-2, 5-15, and 17-23 under 35 U.S.C. §103(a) as unpatentable over U.S. Ghani “Lambda-Labeling: A framework for IP-Over-WDM Using MPLS (hereinafter “Ghani”). To establish a *prima facie* case of obviousness, an Examiner must show that the references teach or suggest each and every element of the claimed invention. (MPEP §2143.) The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. (MPEP §2142.) Applicant respectfully traverses the rejections.

In the Office Action, the Examiner asserts that Ghani discloses “a method for provisioning bandwidth in a hybrid network, comprising: assigning a set of switching wavelengths (WDM channels to wavelength switching/conversion matrix) to traffic in the network, the switching wavelengths being labels to indicate that the traffic is to be switched in optical domain using optical circuit switching; optically switching traffic that is able to be switched using switching wavelengths between nodes using the set of switching wavelengths; assigning a set of routing wavelengths (WDM channels to packet switching level, “packet switching is another common term for routing) to traffic that cannot be switched using switching wavelengths, the routing wavelengths being labels to indicate that traffic is to be routed, undergo conversion from optical domain to electrical domain, and undergo conversion from electrical domain back to optical domain; and routing the traffic that cannot be switched using the routing wavelengths.”

As a first matter, MPEP §706.02(j) states that the Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate. Applicant respectfully requests that the Examiner point to the specific language in Ghani that discloses what the Examiner asserts Ghani discloses. Applicant respectfully submits that Figure 14 provides no such teaching as no switching wavelengths are shown, no routing wavelengths are shown, nor are any wavelengths that can be distinguished from each other shown.

As a second matter, Applicant respectfully submits that the text of Ghani fails to disclose what the Examiner asserts it discloses. For example, the Examiner asserts that Ghani discloses “assigning a set of switching wavelengths to traffic in the network, the switching wavelengths being labels to indicate that the traffic is to be switched in optical domain using optical circuit switching” but points to no text in Ghani supporting the assertion. Ghani does teach at page 46, column 2, lines 17-20, however, that “*migration from optical circuit-switching to some form of optical packet/label switching needs to be considered* more carefully, especially since network operators would like to minimize future transition costs” (emphasis added). Thus, Applicant respectfully submits that Ghani does not contemplate incorporating optical circuit switching as part of its methodology but teaches away from incorporating it.

Furthermore, Applicant is not certain as to what the Examiner means by “WDM channels to wavelength switching/conversion matrix” and respectfully requests clarification. In the alternative, Applicant respectfully requests that the Examiner point to the specific teaching in Ghani that discloses “WDM channels to wavelength switching/conversion matrix.”

The Examiner asserts that Ghani discloses in essence making a determination that traffic cannot be circuit switched and then, based on that determination, routing the traffic using routing wavelengths. Applicant respectfully disagrees with the Examiner’s interpretation. Nowhere in Ghani is there a process whereby a decision is made to route traffic using routing wavelengths if the traffic cannot be switched using switching wavelengths. Again, Ghani expresses serious concern with incorporating circuit switching in its methodology at page 48, column 1, lines 27-30 when it teaches that “a more *ominous concern with circuit-switched layering approach* is that it will likely complicate future migration towards newer optical networking technologies” (emphasis added).

Applicant respectfully submits, therefore, that Ghani is not properly applied to the claimed invention. Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 1-2, 5-15, and 17-23.

Rejection of Claims 3 and 16 Under 35 U.S.C. §103(a)

The Examiner rejected claims 3 and 16 under 35 U.S.C. §103(a) as unpatentable over Ghani in view of U.S. Patent No. 6,111,673 to Chang (hereinafter “Chang”). Applicant respectfully traverses the rejection. Applicant respectfully submits that claims 3 and 16 properly depend from patentable claims 1 and 15, respectively, and thus are patentable over Ghani in view of Chang as well. Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 3 and 16.

Amended claim 20 recites in pertinent part “a first hybrid node to label switched traffic with a set of switching wavelengths, the switching wavelengths being labels to indicate that the traffic is to be switched in optical domain using optical circuit switching, to attempt to send the switched traffic to at least one secondary hybrid node via the set of switching wavelengths, to label traffic that cannot be sent to the at least one secondary hybrid node using the set of switching wavelengths with a set of routing wavelengths, the routing wavelengths being labels to indicate that traffic is to be routed, undergo conversion from optical domain to electrical domain, and undergo conversion from electrical domain back to optical domain, to send the traffic that cannot be sent to the at least one secondary hybrid node using the set of switching wavelengths to the at least one secondary hybrid node via the set of routing wavelengths.” Support for these changes can be found in Applicant’s Specification at page 7, lines 1-5 and 11-15.

Ghani fails to disclose at least these elements. Applicant therefore respectfully submits because Ghani fails to show each and every element of claim 20, claim 20 is patentable over Ghani. Applicant respectfully submits that claim 21 properly depends from claim 20 and thus is patentable over Ghani as well.

Rejection of Claims 8-10 and 12 Under 35 U.S.C. §103(a)

The Examiner rejected claims 8-10 and 12 under 35 U.S.C. § 103(a) as unpatentable over Ghani in view of U.S. Patent Publication No. 2001/0024305 to Nishimoto (hereinafter “Nishimoto”). Applicant respectfully traverses the rejection.

Applicant respectfully submits that claims 8-10 and 12 properly depend from patentable claim 7 and thus are patentable as well.

Rejection of Claim 14 Under 35 U.S.C. §103(a)

The Examiner rejected claim 14 under 35 U.S.C. § 103(a) as unpatentable over Ghani as applied to claim 7, and in further view of Chang. Applicant respectfully traverses the rejection.

Applicant respectfully submits that claim 14 properly depends from patentable claim 7 and thus is patentable as well.

Rejection of Claim 16 Under 35 U.S.C. §103(a)

The Examiner rejected claim 16 under 35 U.S.C. § 103(a) as unpatentable over Ghani as applied to claim 15, and in further view of Chang. Applicant respectfully traverses the rejection.

Applicant respectfully submits that claim 16 properly depends from patentable claim 15 and thus is patentable as well.

Rejection of Claims 22-23 Under 35 U.S.C. §103(a)

The Examiner rejected claim 22-23 under 35 U.S.C. § 103(a) as unpatentable over Ghani as applied to claim 20, and in further view of Chang. Applicant respectfully traverses the rejection.

Applicant respectfully submits that claims 22-23 properly depends from patentable claim 20 and thus is patentable as well.



## CONCLUSION

Applicant respectfully submits that all grounds for rejection have been properly traversed and that the Examiner reconsider and remove the rejections. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: Dec. 17, 2004

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